

FILED

JUN 20 2001

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LOCAL 144 NURSING HOME PENSION
FUND, On Behalf of Itself and All Others
Similarly Situated,

Plaintiff,

v.

ORACLE CORPORATION, et al.,

Defendant.

No. C 01-0988 MJJ

**ORDER GRANTING UCFW LOCAL 56
RETAIL MEAT PENSION FUND,
ROBERT D. SAWYER, LOCAL 144
NURSING HOME PENSION FUND AND
DRIFTON FINANCIAL
CORPORATIONS' MOTION TO BE
APPOINTED LEAD PLAINTIFF AND
APPROVING CHOICE OF LEAD
COUNSEL**

I. INTRODUCTION

Before the Court is one remaining motion¹ regarding the appointment of lead plaintiff and approval of lead counsel in this securities fraud class action lawsuit brought against Oracle Corporation and Lawrence J. Ellison (collectively "Oracle"). The members of the purported class that seek to be appointed lead plaintiff and to have the Court approve their choice of lead counsel are UCFW Local 56 Retail Meat Pension Fund, Robert D. Sawyer, Local 144 Nursing Home Pension Fund, and Drifton Finance Corporation ("Movants"). For the reasons set forth below, the Court

¹Additional motions were filed by C. James Cox, M & G Investment Management Ltd. and Sumner Rulon-Miller, Trustee for Acadia Scholarship Endowment Trust, and the Jose Group (Rene and Cynthia Jose, Thomas Shaffer, Kung Hsu, Chuchen Weng, and Charles Combee), but have since been withdrawn. Furthermore, the Jose Group has withdrawn its opposition to the Movants motion to be appointed lead plaintiff and has indicated that Milberg Weiss, proposed counsel for Movants, has withdrawn as counsel in Pierce v. Ellison, C 01-20304 PVT (N.D. Cal., filed March 12, 2001 (a shareholder derivative action) and thus rendering moot the Jose Group's argument regarding a potential conflict of interest.

1 grants the motion to appoint Movants as lead plaintiff and approves Movants' selection of counsel,
 2 Milberg Weiss Bershad Hynes & Lerach, LLP ("Milberg Weiss").

3 II. FACTUAL BACKGROUND

4 This matter involves nineteen related class actions brought pursuant to § 10(b) of the
 5 Exchanged Act, 15 U.S.C. § 78j(b) and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, which have
 6 been consolidated and await resolution by this Court.² The purported class in each case consists of
 7 institutions and individuals who purchased Oracle securities during the period from December 15,
 8 2000 to March 1, 2000 (the "Class Period"). The complaints in these actions generally allege that
 9 Oracle violated federal securities laws by disseminating false and misleading statements concerning
 10 Oracle's third quarter 2001 revenues and projected earnings. In particular, Plaintiffs claim that
 11 Oracle made misleading statements about the demand for the company's database and applications
 12 products and the market acceptance of its new 11i Suite of software products. Plaintiffs further
 13 allege that Oracle falsely projected that it would achieve very strong earnings per share ("EPS")
 14 growth in the third quarter 2001 of \$0.12, thus allegedly artificially inflating Oracle's stock to a
 15 Class Period high of \$35 per share. While Oracle stock traded at allegedly artificially inflated levels,
 16 Defendant Ellison and others sold nearly \$1 billion worth of Oracle stock.

17
 18 ²The Court granted the motion to consolidate the following cases, with *Local 144 Nursing Home Pension Fund v.*
 19 *Oracle Corp., et al.*, the low-numbered lawsuit against Oracle:

20	<i>Local 144 Nursing Pension Fund v. Oracle Corp., et al</i>	C-01-0988 MJJ
	<i>Belanski v. Oracle Corp., et al.</i>	C-01-1001 MJJ
21	<i>Yaish, et al v. Oracle Corp., et al.</i>	C-01-1237 MJJ
	<i>Birnbaum v. Oracle Corp., et al.</i>	C-01-1011 MJJ
22	<i>Haenel v. Oracle Corp., et al.</i>	C-01-1036 MJJ
	<i>Berdakina v. Oracle Corp., et al.</i>	C-01-1030 MJJ
23	<i>Lowinger v. Oracle Corp., et al.</i>	C-01-1040 MJJ
	<i>Azerrad v. Oracle Corp., et al.</i>	C-01-1047 MJJ
24	<i>Walanka v. Oracle Corp., et al.</i>	C-01-1048 MJJ
	<i>Greenblatt v. Oracle Corp., et al.</i>	C-01-1097 MJJ
25	<i>Gollomp v. Oracle Corp., et al.</i>	C-01-1113 MJJ
	<i>Goldfein v. Oracle Corp., et al.</i>	C-01-1160 MJJ
26	<i>Gordon v. Oracle Corp., et al.</i>	C-01-1174 MJJ
	<i>Tuchman v. Oracle Corp., et al.</i>	C-01-01263 MJJ
27	<i>Rothsholder v. Oracle Corp., et al.</i>	C-01-1036 MJJ
	<i>Monderer v. Oracle Corp., et al.</i>	C-01-1289 JL
28	<i>Farrell, et al. v. Oracle Corp., et al.</i>	C-01-1326 JCS
	<i>Salvo v. Oracle Corp., et al.</i>	C-01-1416 EDL
	<i>Hart, et al. v. Oracle Corp., et al.</i>	C-01-1436 EDL

The proposed lead plaintiffs, Movants, who collectively suffered approximately eight million dollars in losses due to their transactions in Oracle common stock and options, consist of UCFW Local 56 Retail Meat Pension Fund, Robert D. Sawyer, Local 144 Nursing Home Pension Fund, and Drifton Finance Corporation. Movants' stock purchases occurred during the Class Period.

III. ANALYSIS

A. Motion to Appoint Movants as Lead Plaintiff

1. The Private Securities Litigation Reform Act ("PSLRA")

Section 21D of the Exchange Act, 15 U.S.C. § 78u-4, as amended by the PSLRA, sets forth the procedure for the selection of lead plaintiff to oversee class actions brought under the federal securities laws. Section 21D(a)(3)(A)(i), 15 U.S.C. § 78u-4(3)(A)(i), provides that within twenty days after the date on which a class action is filed under the PSLRA,

the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class -

- (1) of the pendency of the action, the claims asserted therein, and the purported class period; and
- (2) that not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

On March 9, 2001, pursuant to § 21 D(a)(3)(A)(i), Movants published a notice of pendency of the action on the *Business Wire*. (Britton Decl., Ex.C.) That notice advised class members of the existence of the lawsuit and described the claims asserted. Movants motion to be appointed lead plaintiff was timely filed on May 8, 2001, within sixty days from the publication of that notice.

Pursuant to 15 U.S.C. § 78u-4, the court "shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members." 15 U.S.C. § 78u-4(a)(3)(B)(i). The PSLRA creates a rebuttable presumption that the most adequate plaintiff in any private action arising under this title is the person or group of persons that (1) "filed the complaint or made a motion" to be appointed lead plaintiff, (2) "has the largest financial interest in the relief sought by the class," and (3) "otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15 U.S.C. § 78u-

1 4(a)(3)(B)(iii)(I). This presumption may be rebutted “upon proof by a member of the purported
 2 plaintiff class that the presumptively most adequate plaintiff . . . will not fairly and adequately
 3 protect the interests of the class” or “is subject to unique defenses that render such plaintiff incapable
 4 of adequately representing the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

5 **2. Appointment of Lead Plaintiff**

6 In this case, Movants are the most adequate plaintiffs under the terms of the PSLRA’s lead
 7 plaintiff presumption. See 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). They have the largest financial interest
 8 in the relief sought by the class by reason of the fact that they have suffered the greatest financial
 9 loss, \$8,187,517.14, of all the formerly proposed lead plaintiffs. Also, as discussed further below,
 10 Movants satisfy the requirements of Rule 23 because their claims are similar to the claims of other
 11 class members and because they have demonstrated that they are willing and able to obtain
 12 appropriate class counsel and adequately prosecute this case. The appointment of Movants also
 13 conforms with the Congressional concerns that motivated passage of the PSLRA. As an institutional
 14 investor with a large financial stake in the outcome of this litigation, Movants significant losses
 15 provide them with the incentive to actively represent the class in obtaining a recovery for Oracle’s
 16 alleged securities violations.

17 In order to establish itself as the “most adequate plaintiff” under the PSLRA, Movants must
 18 show they can discharge the fiduciary duties that a class representative owes to absent class members
 19 under Rule 23. See 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc). Rule 23 provides that a party may serve
 20 as a class representative if four prerequisites are satisfied:

21 (1) the class is so numerous that joinder of all members is impracticable, (2) there are
 22 questions of law or fact common to the class, (3) the claims or defenses of the
 23 representative parties are typical of the claims or defenses of the class, and (4) the
 representative parties will fairly and adequately protect the interests of the class.

24 Fed. R. Civ. P. 23(a).

25 Movants assert that the questions of law and fact common to the members of the class that
 26 predominate over questions that may affect individual class members include: (1) whether
 27 Defendants’ acts, as alleged, violated federal securities laws; (2) whether Defendants participated in
 28 and pursued the common course of conduct complaint of; (3) whether documents, SEC filings, press

1 releases and other statements disseminated to the investing public and Oracle's stockholders during
2 the Class Period misrepresented material facts about Oracle's financial condition and earnings; (4)
3 whether the market price of Oracle's securities was artificially affected during the Class Period due
4 to Defendants' misrepresentations and omissions; and (5) whether members of the class have
5 sustained damages and, if so, what is the proper measure of damages. The claims of each purported
6 class member in this case arise from the same event or course of conduct giving rise to the claims of
7 the other class members, therefore, Movants satisfy the typicality requirement of Rule 23. See In re
8 United Energy Corp. Solar Power Modules Tax Shelter Inv. Sec. Litig., 122 F.R.D. 251, 256 (C.D.
9 Cal. 1988); accord Blackie v. Barrack, 524 F.2d 891, 902-03, n.19 (9th Cir. 1975).

10 Movants have also demonstrated they are adequate representatives pursuant to Rule 23(a)(4).
11 This determination focuses on two inquiries: (1) whether the interests of the class representative
12 coincide with those of the class, and (2) whether the representative has the ability to prosecute the
13 action vigorously through the services of competent counsel. See In re Computer Memories Sec.
14 Litig., 111 F.R.D. 675, 682 (N.D. Cal. 1986). First, adequacy requires the absence of antagonistic
15 interests between class representatives and absent class members. Here, since the issues surrounding
16 the Defendants' alleged wrongdoing are virtually identical for each and every class member, the
17 interests of Movants are suitably aligned with the interests of the class as a whole. There is no
18 evidence of antagonism between the Movants' interests and the interests of the proposed class.

19 Second, the Court considers Movants' willingness and ability to assume the duties of lead
20 plaintiff, including the crucial duties of choosing adequate counsel at a negotiated fee and
21 monitoring that counsel's conduct throughout the litigation. Movants have demonstrated their
22 adequacy by signing sworn certifications affirming their willingness to serve as, and assume the
23 responsibilities of, class representatives. (See Britton Decl., Ex. A.) Furthermore, Movants have
24 selected a law firm that is experienced in prosecuting securities class actions to represent them.
25 Accordingly, the Court finds that Movants satisfy the requirements of Rule 23, and all of the
26 PSLRA's prerequisites for appointment as lead plaintiff in this action, and appoints Movants as lead
27 plaintiff pursuant to 15 U.S.C. § 78u-4(a)(3)(B).

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United States District Court
for the
Northern District of California
June 20, 2001

* * CERTIFICATE OF SERVICE * *

Case Number:3:01-cv-00988

Nursing Home Pension

vs

Oracle Corporation

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 20, 2001, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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